

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1163 of 1995

Hon'ble MR.JUSTICE Y.B.BHATT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

FAKIRMOHMAD KHANJI YAWARKHANJICHAUHAN

Appearance:

K.G. SHETH, AGP, for Petitioner

MR YOGESH S LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 18/10/1999

ORAL JUDGEMENT

1. This is a revision under section 115, CPC at the instance of the original defendant-judgement debtor (in execution proceedings).

2. The respondent herein as plaintiff had obtained a decree against the present petitioner, which the decree holder sought to enforce by filing execution proceedings viz. Special Darkhast No.72/91. In the said execution

proceedings the judgement-debtor (present petitioner) had filed its reply/objections to Exh.1 at Exh.16 on 27th April 1993.

3. However, before these objections at Exh.16 filed by the judgement-debtor could be examined and decided, the present petitioner filed another application at Exh.26, on extremely vague generalisations and vague prayers to the effect that looking to the controversy between the parties it is necessary to raise appropriate issues and that oral evidence is required to be led on such issues, and that therefore appropriate orders be passed on that application viz. Exh.26. The trial court rejected the said application mainly on the ground of vagueness and also on the ground that it appears that the judgement-debtor, by filing the present application, is merely making an attempt to go behind the decree passed by the trial court, which had been partly confirmed by the High Court by a Division Bench judgement of 6/7th October 1980 in First Appeal No.565/74.

4. It is common ground on both sides that the judgement-debtor's objections to the execution proceedings at Exh.16 are yet to be heard and decided. Thus, mere rejection of the application at Exh.26, which is the subject matter of the present revision, does not in any manner prejudice the rights of the present petitioner.

5. It goes without saying that when the execution proceedings proceed further in accordance with the provisions of Order 21, CPC, the objections to the execution proceedings filed by the present petitioner at Exh.16 are bound to be heard and decided by the executing court on merits and in accordance with law. It is so accordingly directed.

6. In the premises aforesaid, the rejection of the present application Exh.26 is in no manner prejudicial to the interest of the present petitioner judgement-debtor.

7. It is clarified that the executing court will consider the objections at Exh.16 filed by the judgement-debtor, in the context of the relevant provisions of Order 21, CPC, and deal with such objections as and when the occasion arises during the course of hearing of the execution proceedings. Since the execution proceedings are of the year 1991, the executing court shall now give due priority to the disposal of the same and dispose it of as expeditiously as possible.

8. In the premises aforesaid, I find that there is no jurisdictional error within the meaning of section 115 of CPC so far as the impugned order passed below Exh.26 is concerned. This, revision is, therefore, dismissed. Rule is discharged with no order as to costs. Ad interim relief vacated.
